

The Catholic Lawyer

Volume 17
Number 4 *Volume 17, Autumn 1971, Number 4*

Article 10

March 2017

Morality in Legal Practice: Disclosure

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Recommended Citation

(1971) "Morality in Legal Practice: Disclosure," *The Catholic Lawyer*. Vol. 17 : No. 4 , Article 10.
Available at: <https://scholarship.law.stjohns.edu/tcl/vol17/iss4/10>

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MORALITY IN LEGAL PRACTICE*

Disclosure

A sixty-year-old immigrant laborer, admitted to premises to answer the owner's advertisement for Saturday help, fell because a step collapsed as he stepped upon it. A hitherto competent and reliable employee of the owner had known the condition of the step and had violated his employer's instructions to close immediately and repair any passage found to be unsafe.

The laborer sustained a dislocation of the shoulder and a laceration of the scalp which required three weeks' hospitalization. For a month after his discharge from the hospital, he could not return to his regular job.

The laborer, who spoke very little English brought suit against the owner of the premises where he had fallen. The plaintiff claimed that the injury to his shoulder was of serious and disabling nature. He also claimed that he suffered from headaches as a result of striking his head at the time of the accident.

Hospital records confirmed that the shoulder injury was sustained and indicated that four sutures were taken in the scalp. The plaintiff's attorneys had no medical examination made of their client. Nor did they ask for copies of the reports made by the physicians employed by the defendant.

The attorney for the defendant had the laborer examined by an orthopedic specialist, to ascertain the seriousness of the shoulder injury. In addition, but on the same occasion, examination was made by a neurologist, to meet the complaint of headaches.

The orthopedist confirmed the hospital report on the shoulder injury. The neurologist reported to the defendant's attorney that the plaintiff had not sustained a serious head injury and had no skull fracture, but

* Reprinted from 4 CATHOLIC LAWYER 252 (Summer, 1958).

that the laborer was suffering from an incurable, always fatal, malady of the nervous system called Parkinson's disease. The neurologist counselled that while there is now no known cure, the more painful and disabling stages of the disorder can be delayed in their onset and ameliorated by drug therapy, avoidance of anxiety and fatigue, regular exercise and light massage, and psychotherapy. The neurologist indicated that he did not personally subscribe to the theory that Parkinson's disease can be caused by trauma. Yet he cautioned the defendant's attorney that many eminent men in the field believe that trauma can cause Parkinson's disease and that there is much literature to support this view.

In pretrial conferences it became evident to the defendant's attorney that the laborer and his attorneys had no knowledge that the plaintiff was afflicted with Parkinson's disease, and that if the plaintiff's attorneys suspected that this condition existed, the case could not be disposed of without a protracted and expensive trial.

The defendant, his attorney and the doctors who made examinations in their behalf, at no time intimated to the plaintiff or his attorneys the diagnosis of Parkinson's disease. The court itself, which was instrumental in effecting the settlement, was not apprised that this diagnosis had been made since the defendant's attorney deliberately withheld the information. On the other hand, he freely turned over to the court and the plaintiff's attorneys the report of the orthopedic specialist, describing the shoulder injury only.

As a result of these negotiations, the case was settled between the parties without a trial. The defendant paid a sum which amply compensated the plaintiff for his shoulder injury, and the plaintiff gave a general release as to personal injuries, "whether developed or undeveloped, resulting or to result," from the accident.

Now, a month after the settlement was made, the defendant's attorney has come to feel that he may have a moral obligation to aid the plaintiff. Does such obligation exist, and if so, to what extent?